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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2009-289

13 **MICHAEL THOMAS BENSON, A.K.A.,**
14 **MICKEY THOMAS BENSON, A.K.A.,**
15 **MICHAEL BENSON**
14494 Lower Colfax Road
Grass Valley, California 95945

A C C U S A T I O N

15 Registered Nurse License No. 400909

16 Respondent.

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18 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the
21 Executive Officer of the Board of Registered Nursing ("Board") Department of Consumer
22 Affairs.

23 **Registered Nurse License**

24 2. On or about August 31, 1986, the Board issued Registered Nurse License
25 Number 400909 to Mickey Thomas Benson, also known as Michael Thomas Benson and
26 Michael Benson ("Respondent"). The registered nurse license will expire on December 31, 2009,
27 unless renewed.

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JURISDICTION

3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 118, subdivision (b), provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

6. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct. . . .

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

7. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

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REGULATORY PROVISION

8. California Code of Regulations, title 16, section ("Regulation") 1442 states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

COST RECOVERY

9. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

10. **DRUGS**

"Dilaudid," a brand of hydromorphone, is a Scheduled II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(K), and a dangerous drug under Code section 4022 in that it requires a prescription under federal law.

"Phenergan," a brand of promethazine hydrochloride, is a dangerous drug within the meaning of Business and Professions Code section 4022 in that it requires a prescription under federal law.

FIRST CAUSE FOR DISCIPLINE

(Falsify Patient and/or Hospital Records)

11. Respondent is subject to discipline under Code section 2762, subdivision (e), for unprofessional conduct, in that on or about September 11, 2004, through October 21, 2004, while on duty as a registered nurse at Sierra Nevada Memorial Hospital, Grass Valley, California, Respondent falsified or made grossly incorrect, inconsistent, or unintelligible entries in the following hospital and patient records:

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1 **Patient 2**

2 a. On October 20, 2004, at 2018 hours, Respondent withdrew 25 mg of
3 Phenergan from the Pyxis System for this patient; however, Respondent failed to chart the
4 administration of any portion of the drug in the patient's medication administration record or
5 otherwise account for the disposition of the drug in any patient or hospital record.

6 b. On October 20, 2004, at 2318 hours, Respondent withdrew 25 mg of
7 Phenergan from the Pyxis System for this patient; however, Respondent failed to chart the
8 administration of any portion of the drug in the patient's medication administration record or
9 otherwise account for the disposition of the drug in any patient or hospital record.

10 c. On October 21, 2004, at 0212 hours, Respondent withdrew 25 mg of
11 Phenergan from the Pyxis System for this patient; however, Respondent failed to chart the
12 administration of any portion of the drug in the patient's medication administration record or
13 otherwise account for the disposition of the drug in any patient or hospital record.

14 d. On October 21, 2004, at 0654 hours, Respondent withdrew 25 mg of
15 Phenergan from the Pyxis System for this patient; however, Respondent failed to chart the
16 administration of any portion of the drug in the patient's medication administration record or
17 otherwise account for the disposition of the drug in any patient or hospital record.

18 **Patient 3**

19 e. On October 21, 2004, at 0301 hours, Respondent withdrew 25 mg of
20 Phenergan from the Pyxis System for this patient; however, Respondent failed to chart the
21 administration of any portion of the drug in the patient's medication administration record or
22 otherwise account for the disposition of the drug in any patient or hospital record.

23 **SECOND CAUSE FOR DISCIPLINE**

24 **(Gross Negligence)**

25 12. Respondent is subject to discipline under Code section 2761, subdivision
26 (a)(1), on the grounds of unprofessional conduct, in that on or about September 11, 2004,
27 through October 21, 2004, while on duty as a registered nurse at Sierra Nevada Memorial
28 Hospital, Grass Valley, California, Respondent committed acts constituting gross negligence, as

1 defined in California Code of Regulations, section 1442, as follows:

2 a. Respondent failed to properly document the wastage of controlled
3 substances, as more particularly set forth in the paragraph 11, above.

4 b. Respondent administered controlled substances to patients prior to
5 receiving physician's orders to do so, as more particularly set forth as follows:

6 **Patient 6**

7 On October 17, 2004, at 0202 hours (approximately 6 hours prior to the
8 physician's order), Respondent withdrew 2 mg of Dilaudid from the Pyxis System for this
9 patient. Respondent charted the administration of 1 mg of Dilaudid and the wastage of 1 mg of
10 Dilaudid in the patient's medication administration record; however, the physicians order was not
11 received until 0750 hours.

12 **PRIOR DISCIPLINE**

13 13. Effective April 30, 1995, pursuant to the Stipulation, Decision and Order
14 in Accusation No. 92-129, Respondent's Registered Nurse License Number 400909 was
15 revoked; however, revocation was stayed and Respondent was placed on probation for a period
16 of three (3) years with terms and conditions. The basis for discipline was that in or about
17 December 1990, while on duty as a registered nurse at Kaiser Permanente Hospital, Respondent
18 obtained and possessed the controlled substances Demerol and Morphine in violation of law,
19 which also resulted in a criminal conviction. Further, in or about January and February 1992,
20 while on duty as a registered nurse at Roseville Hospital and Methodist Hospital, Respondent
21 failed to properly chart the administration and/or wastage of the controlled substances Dilaudid
22 and Demerol.

23 **PRAYER**

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein
25 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

26 1. Revoking or suspending Registered Nurse License Number 400909, issued
27 to Michael Thomas Benson, also known as Mickey Thomas Benson and Michael Benson;

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2. Ordering Michael Thomas Benson, also known as Mickey Thomas Benson and Michael Benson to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: 5/12/09

Ruth Ann Terry
RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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ps (10/22/08) rev. 4/28/09